

REMARKS

Restriction

Claims 1-50 are pending in this application and have been subjected to restriction under 35 U.S.C. § 121 and 372 because, in the Examiner's opinion, as set forth in the Detailed Action, the application contains both product and process claims, which claims are not so linked as to form a single general inventive concept under PCT Rule 13.1. Applicants disagree, and accordingly traverse the Examiner's restriction requirement.

The Examiner determined that there were two groups of claims subject to the restriction requirement:

- Group I: Claims 1-34 and 36-50, drawn to compositions, and
- Group II: Claim 35, drawn to a method for imparting a volumizing effect.

Applicants provisionally elect Group I with traverse, including claims 1-34 and 36-50 for prosecution. Applicants respectfully disagree with the restriction requirement imposed by the Examiner and the characterizations made of the claimed invention.

It is the Examiner's position that restriction is appropriate because inventions of Groups I and II lack unity of invention because the claims in these groups fail to express special technical features so as to "define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art so linked as to form a single general inventive concept." OA at page 2, last full paragraph. The Examiner determined that Claim 1 failed to define a contribution over the prior art because it lacks inventive step, citing US 2002/0122772 ("Lukenbach") in view of US 5389363 ("Snyder").

Applicants submit that all claims in the subject application are linked by shared special technical features that form a single general inventive concept; namely, a cosmetic composition that expands following application to a hair fiber, at least a portion of which then sets in such expanded state.

Applicants further note that claim 35 is drawn to a method for imparting a volumizing effect characterized by the step of contacting the hair with the composition of claim 2 for a time sufficient to obtain *said* volumizing effect. (Emphasis added.)

Claim 2 clearly describes *said* effect referred to in claim 35, as appears in italics below:

2. A *post-application expanding* cosmetically acceptable composition for *application to hair fibers* of the scalp, eyebrows or eyelashes comprising at least one surfactant, a solvent for the surfactant, a volatile agent in an amount effective to *swell the composition after application to the hair fibers*, and a film-forming agent, the film-forming agent being present in an amount effective to *form a film and, when the film sets, fix at least a portion of the swelled composition in an expanded state*. (Emphasis added.)

Applicants are at a loss to understand how these technical features are absent from the invention of claim 35, since the composition applied in claim 35 is the composition of claim 2.

The only technical feature that could arguably be said to be different is the step of contacting the hair. Applicants fail to understand how the absence of this feature changes the general inventive concept when the inventions are considered as a whole and in light of the interrelatedness of claim 35 to claim 2.

Applicants further submit that Claim 1 (or claim 2) is patentable over Lukenbach in view of Snyder. Lukenbach is a self foaming cleansing gel. The

Examiner admits that Lukenbach "... does not teach a film forming agent in self foaming gel,..." OA at page 2, last full paragraph. The Examiner states that Snyder makes up this deficiency of the Lukenbach reference.

Lukenbach is useful as a facial cleanser, body wash, or shampoo. The practitioner of ordinary skill in the cosmetics arts would understand that a primary attribute of such a product would be the ease with which the cleanser of Lukenbach could be rinsed from the body, *and without leaving a residue or film*. Indeed, having a film former in the compositions of Lukenbach would be antithetical to their intended purpose as cleansers.

Snyder does not resolve this deficiency of Lukenbach. The Snyder invention is for the purpose of lengthening lashes. It accomplishes this by forming a cosmetic composition obtained by mixing a gel composition containing a water dissipatable polyester of polyamide together with an oil in water base composition comprised of pigment, wax, and an oil soluble synthetic polymer (as recited), the mixing of the water dissipatable polymer and the oil soluble polymer causing the gel composition to react with the oil soluble synthetic polymer in the base composition. It appears the reaction product produces filaments analogous to fibers, such as nylon fibers, which are conventionally used to produce a lash lengthening effect.

The purpose of the compositions and method of the present invention is to thicken the hair strand by enveloping the post foamed composition with a film forming polymer, thereby adding volume to the lash, to achieve a benefit not anticipated nor intended by Snyder.

Applicants respectfully request that the restriction requirement be withdrawn and all presented claims be examined on the merits.

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Respectfully submitted,

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